



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 21, 1996

Mr. M. B. Donaldson  
Superintendent of Schools  
Aldine Independent School District  
14910 Aldine-Westfield Road  
Houston, Texas 77032

OR96-2172

Dear Mr. Donaldson:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 102071.

The Aldine Independent School District (the "school district") received a request for "all details relative to [an] incident" in which school district police officers drove to a gambling casino in Louisiana, including the names of the officers involved, the date of the incident, any disciplinary action taken against each officer. You assert that the requested information is excepted from required public disclosure based on Government Code sections 552.101, 552.102, 552.103 and 552.108.

Section 552.108 of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution. Gov't Code § 552.108; *see Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). You raise this exception in regard to the officers' statements about the incident. You say these "statements constitute law enforcement records taken as part of the police department's internal investigation to determine whether the officers had engaged in criminal activity and whether the matter should be referred to the district attorney's office for prosecution." We conclude that the school district may withhold the statements from public disclosure pursuant to section 552.108, unless the district attorney determines that he or she will not prosecute the officers. *See Open Records Decision No. 350 (1982).*

We next address the other arguments you raise in the event the district attorney elects not to prosecute. You assert that the information is excepted from public disclosure based on sections 552.101 and 552.102 because you contend that the release of the information will result in an unwarranted invasion of the officers' privacy and would place the officers in a "false light." Section 552.101, which excepts from disclosure information that is confidential by law, incorporates the common-law right to privacy. Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The test to applied to information claimed to be protected under section 552.102 is the same test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101. *See Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.).

We have reviewed the information. We do not believe it contains highly intimate or embarrassing facts about the officers' private affairs. Moreover, as the incident apparently involved the conducting of school district business, we believe the public has a legitimate interest in the information. *See Open Records Decision No. 484* (1987). Accordingly, the information is not protected from public disclosure based on section 552.101 in conjunction with the common-law right to privacy. Furthermore, section 552.101 does not incorporate the tort of false-light privacy. *See Open Records Decision No. 579* (1990).

Finally, we consider your section 552.103 claim. Section 552.103(a) of the Government Code excepts from required public disclosure information

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision as a consequence of the person's office or employment, is or may be a party; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. *Open Records Decision No. 588* (1991). You state:

I have been advised by the school district's attorney that the information relates to a pending civil administrative hearing before the Texas Education Agency and to a federal lawsuit, that release of the information could compromise the school district's interest in the pending litigation, and that the information should be withheld from public disclosure under section 552.103. The administrative case and the lawsuit were filed by a former police officer. One of the petition's claims is that she was not disciplined fairly, not disciplined like other similarly situated police officers, and not disciplined according to proper procedure."

We do not believe the school district has established that the information at issue is related to the pending litigation. Accordingly, the school district may not withhold the information from required public disclosure based on section 552.103.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo  
Assistant Attorney General  
Open Records Division

KHG/rho

Ref.: ID# 102071

Enclosures: Submitted documents

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(w/o enclosures)